

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 30, 2003 at 9:01 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Don Ryan (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 230, 1/17/2003; SB 231,
1/17/2003
Executive Action: SB 201; SB 101

{Tape: 1; Side: A}

HEARING ON SB 230

Sponsor: SENATOR BRENT CROMLEY, SD 9, BILLINGS

Proponents: Dan McLean, State Bar of Montana; John Cadby, Montana Bankers Association; Brenda Elias, State Auditors Office

Opponents: None

Opening Statement by Sponsor:

SEN. BRENT CROMLEY said SB 230 is an act adopting the Montana Prudent Investor Rule. He provided written testimony, **EXHIBIT** (bus20a01) .

Proponents' Testimony:

Dan McLean, State Bar of Montana, shared this bill is a matter of clean-up to bring Montana's codes in line with other states. It gives more flexibility to fiduciaries and trustees to be able to manage investments under modern law. SB 230 has been adopted in 38 states and is based on California law.

John Cadby, Montana Bankers Association, said that in checking with trust officers, they support SB 230.

Brenda Elias, State Auditors Office, rose in support of SB 230, because it would require a similar standard of care that is required of investment advisors in the handling of client portfolios.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. GLENN ROUSH asked Mr. McLean the definition of a prudent investor. Mr. McLean replied that it's a standard that takes into account what an average person would do when investing.

SEN. VICKI COCCHIARELLA questioned Mr. McLean about language on page 5, line 19. He said the trustee can rely on statements that are in the trust agreement.

CHAIRMAN DALE MAHLUM referred to the trustee being placed in an honorable position due to the fact they are taking care of assets for entities and people. He asked if trustees ever "fall overboard." Mr. McLean said they sometimes breach their duties, but the law has remedies to take of those situations.

SEN. KIM HANSON wanted to know why all states don't have this law. **Mr. McLean** spoke of some states being very jealous of their laws. Montana has not adopted the Uniform Trust Code, but does have something similar to it. There are 32 states who recognize this law.

Closing by Sponsor:

SEN. CROMLEY stated briefly this bill gives the state an opportunity to provide some uniformity in this area and protection for the beneficiaries of trusts. In response to **SEN. HANSON'S** question, **SEN. CROMLEY** said, as these statutes are changed, they go through a process and other states will probably follow in the future.

HEARING ON SB 231

Sponsor: SENATOR BRENT CROMLEY, SD 9, BILLINGS

Proponents: Dan McLean, State Bar of Montana; John Cadby, Montana Bankers Association

Opponents: None

Opening Statement by Sponsor:

SEN. BRENT CROMLEY distributed a fact sheet, **EXHIBIT (bus20a02)**, and shared that SB 231 deals with the same topic, but it is a little more sweeping in that it removes a set of codes and replaces it with a new set. The original version of the codes was adopted in 1989 and there have been no amendments since that time. This new version has been adopted by 29 other states and provides some modernization for modern investment theory as well as provide uniformity and a good sense of experience to those persons acting as trustees within the state of Montana. They can base their activities on a very broad spectrum and definition of activity.

Proponents' Testimony:

Dan McLean, State Bar of Montana, said the goal of this bill is to modernize the Principal and Income Act, which is an obscure concept for most people. The existing act was adopted in 1989 and was based on a former version adopted by the National Commission on Uniform State Laws. This bill would give more flexibility to trustees. **Mr. McLean** referred to the fact sheet, (EXHIBIT 2).

John Cadby, Montana Bankers Association, stated they support the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. KELLY GEBHARDT referred to the fact sheet and asked **Mr. McLean** what kind of expertise is needed in the area of natural resources. He replied the reference on the fact sheet is a section that allows management of assets and trusts that are not necessarily incorporated types of industry, such as timber. This bill authorizes the hiring of specialty managers who already have expertise in the area.

SEN. VICKI COCCHIARELLA wanted to know if a person was going to be a trustee, would a private individual be allowed do so. **Mr. McLean** said there are a whole series of duties a person would assume if he wanted to be a trustee.

Closing by Sponsor:

SEN. CROMLEY voiced his support of the bill and thanked the committee for their attention.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON SB 201

SEN. VICKI COCCHIARELLA moved **DO PASS AS AMENDED** on SB 201. **SEN. KELLY GEBHARDT** made a substitute motion to **INDEFINITELY POSTPONE** SB 201. After a lengthy discussion, the vote was 7 to 2 in favor of indefinitely postponing the bill with **SEN. COCCHIARELLA** and **SEN. KIM HANSON** voting no.

{Tape: 2; Side: A}

EXECUTIVE ACTION ON SB 101

Eddye McClure, Legislative Staffer, explained the amendments, **EXHIBIT (bus20a03)** (SB010101.aem). A discussion followed on the concerns of the Montana Historical Society and its board of trustees about SB 101, **EXHIBIT (bus20a04)**. **SEN. VICKI COCCHIARELLA** moved **DO PASS AS AMENDED**. The vote was unanimous in favor of SB 101.

ADJOURNMENT

Adjournment: 10:17 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus20aad)